

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:13CV684-MOC-DSC**

JAMES T. STROUD,)	
)	
Plaintiff,)	
)	
v.)	
)	
)	
GASTON COUNTY, et. al.,)	
)	
Defendants.)	
)	
)	
_____)	

MEMORANDUM AND RECOMMENDATION

THIS MATTER is before the Court on Defendants’ “12(b) Motions to Dismiss ...” (document #7) and “Memorandum ... in Support” (document #8), both filed April 3, 2014. Defendants move for dismissal based upon insufficient service of process and other grounds.

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Court has advised Plaintiff, who is proceeding pro se, that he has a right to respond to Defendants’ Motion. The Court also advised Plaintiff that “failure to respond may result in Defendants being granted the relief they seek, that is, the **DISMISSAL OF THE COMPLAINT WITH PREJUDICE.**” “Order” entered April 3, 2014 (document #9) (emphasis in the original). The Court allowed Plaintiff until May 2, 2014 to respond to the Motion to Dismiss.

On April 22, 2014, Plaintiff filed his “... Response ... to ... April 3, 2014 Order” (document #10) seeking a thirty-day extension of time in which to respond to the Motion to Dismiss. Plaintiff also sought early discovery.

On April 23, 2014, the Court granted Plaintiff an extension until June 2, 2014 but denied

his request for early discovery. The Court repeated its earlier Roseboro warning. The Court further warned Plaintiff that “there will be no further extensions of this deadline absent exceptional circumstances.” “Order” (document #12).

Plaintiff has still not responded to the Motion to Dismiss.

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1), and the Motion is now ripe for the Court’s consideration.

The Court has carefully reviewed Defendants’ Motion and supporting brief, the record, and the authorities. For the reasons stated therein, the undersigned recommends that the Complaint be dismissed pursuant to Fed. R. Civ. P. 12(b)(2), (4) and (5) for insufficient service of process.

RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that Defendants’ “12(b) Motions to Dismiss ...” (document #7) be **GRANTED** and that the Complaint be **DISMISSED WITHOUT PREJUDICE**.


NOTICE OF APPEAL RIGHTS

The parties are hereby advised that, pursuant to 28 U.S.C. §636(b)(1)(c), written objections to the proposed findings of fact and conclusions of law and the recommendation contained in this Memorandum must be filed within fourteen (14) days after service of same. Failure to file objections to this Memorandum with the District Court constitutes a waiver of the right to de novo review by the District Judge. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir. 1989). Moreover, failure to file timely objections will also

preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140, 147 (1985); Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Wells, 109 F.3d at 201; Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to send copies of this Memorandum and Recommendation to the pro se Plaintiff, Defendants' counsel, and to the Honorable Max O. Cogburn, Jr.

SO RECOMMENDED AND ORDERED.



David S. Cayer
United States Magistrate Judge

